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Devolution and constitutional reform in the United Kingdom, Spain and Italy

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Abstract

The rise of the meso level of government in Europe can be explained by the pressures of managing national diversity, functional restructuring and political change. Spain, Italy and the United Kingdom all have such a level but taking very different forms. All have embarked on a second round of devolution. This differs in kind from the initial decision to devolve because new territorial actors play a role. Issues at stake have included issues of symbolic recognition, welfare state restructuring and fiscal competition and equity. The process has been incremental, with issues dealt with sequentially rather than together. The process is centrifugal but the role of territorial parties and governments in the process or reform links them back into state-wide politics. The territorial dimension of politics is thus strengthened and devolution becomes an element in 'normal politics'.

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1. Devolution and the rise of meso government

All the large countries of Europe and several of the smaller ones have, in recent decades, seen the rise of a new 'regional' or 'meso' level of government (Swenden, 2006; Keating, 1998). Reasons for this vary from one case to another but there are various factors in common. One is the management of national diversity. The United Kingdom and Spain are plurinational states, in which rival nation-building projects in the periphery present a continual challenge to the central regime. Italy is less clearly plurinational but the specific conditions and demands of the island and border regions were marked enough to produce special statutes of autonomy after the Second World War. To national diversity can be added economic diversity, with considerable divergence in productive capacity and wealth, especially between north and south in Italy and Spain. While for thirty years after the Second World War, these disparities were addressed primarily through centralized regional policies, thinking about regional development has gradually changed, to emphasize endogenous factors and bottom-up approaches based on enhancing regional competitiveness. This has led to regional development policies themselves being decentralized and to regions being pitched into competition for investment. State reform is another factor, as regional government is seen as a contribution to administrative modernization and effectiveness, and a means to relieve the political and bureaucratic burden on central governments. More recently, welfare state reform has taken on a regional dimension, as states have sought to ration provision in health and other social services and to bring together economic development with social

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support through active labour market policies. The regional level has often been the meeting point of these different sectoral initiatives.

Political trends have also favoured regional devolution. The left, although it has a localist tradition, was from the mid-twentieth century rather centralist in its orientation, seeing a strong central state as a necessity to redistribute resources and guide the economy. Since the 1970s, however, sections of the left have rediscovered decentralization and in particular the regional level as a framework for economic and social policies. Yet the centre-left is still committed to national standards and equality, creating some tensions and inconsistencies. Trade unions have favoured regional decentralization but at the same time insisted on a continued national framework for labour market regulation and collective bargaining. The centre-right, which also has decentralist traditions going back to the nineteenth century, has been less keen on the new meso level, although some sections favour it as a way of rolling back the central state. Although one might see some affinities between territorial devolution and functional retreat of the state, however, neo-liberal parties have usually needed a strong state in order to push through their very programme of deregulation, while being suspicious of new levels of government, which might seek to re-regulate at a new scale. Business interests have in many cases come to look favourably on the regional level as an appropriate scale for planning and development policies but have almost invariably preferred corporatist forms of government, with a strong role for themselves, so avoiding the politicization of the region, access by non-business interests and extension of the political agenda beyond economic development in its narrow meaning. In all three states, unionists play on the problematic experiences of national unity to condemn devolution as the precursor of secession.

The 'new regionalism' (Keating, 1998; Cooke and Morgan, 1998) has been another influence, showing how functional rescaling is raising the importance of new territorial levels and pointing to the need for corresponding forms of regulation and political accountability. The 'vulgar' version of new regionalism (Lovering, 1999) with its invocation of the region as a space in which the otherwise conflicting

demands of economic competitiveness and social solidarity can be resolved, has attracted the attention of centrist politicians and post-social democrats of 'third way' tendencies, often inspired by Putnam's (1993) somewhat reductionist version of the concept of social capital. The weak intellectual underpinnings of much of this work and the wishful thinking embodied in it does not diminish its appeal to politicians looking for ways out of the more painful dilemmas of modern government. In practice, the regional level provides another arena for economic and political contestation, while the shape of that arena, or the form of regional government, is also a matter of contention, since different designs will privilege different interests.

Party advantage has been recurrent influence. Parties in national opposition tend to favour regional decentralization but change their minds after they return to government; hence the best time for reform is immediately after a national election. In all three states, there are territorial parties committed to constitutional change and challenging state-wide parties in state and devolved elections. State-wide parties themselves may have territorial sections committed to autonomy, either from principle or to compete with territorial challengers. As meso-level government has consolidated, it has become a power-base for politicians either to press for more autonomy or to operate within national politics.

2. Three systems

The United Kingdom, Spain and Italy are devolved states, inspired variously by these influences but presenting rather different models of meso government. In all cases the issue of territorial reform goes back at least until the nineteenth century, but change has proved difficult and uneven. The United Kingdom has been a unitary state but one that recognized national diversity within state and civil society. After more than a hundred years of debate, devolved assemblies were established in 1999 in Scotland and Wales and restored in Northern Ireland. Progress on regional devolution in England stalled twice, in the late 1970s and again in the early 2000s, leaving England with only administrative management at the regional level (Hazell,

2006). In Spain, autonomist demands from Catalonia, the Basque Country and Galicia produced statutes of autonomy in the 1930s, which were rescinded by Franco during or after the Civil War. Restoration of democracy in the 1970s produced new statutes and, this time, a diffusion of autonomy to the whole of Spain (Aja, 2003). Italian regions, debated since unification in the 1860s, were provided for in the post-war constitution but, apart from the five special-status regions, were not set up until 1970 and gained competences only slowly after that (Baldi and Baldini, 2006). This presents us with three rather different models of devolution. The United Kingdom is a highly asymmetrical state, with extensive devolution (in different ways) to the three peripheral nations, while England remains under central control. Spain has a system in which demands for differentiation from the historical nationalities are balanced by catching-up demands from the other regions. In Italy, the special-status regions have a distinct range of competences, although there is also a tendency to try and catch up. All three systems represent a compromise among the various principles outlined above and are continuously under challenge from autonomist, centralist and (in some cases) separatist forces.

3. Second round devolution

In none of the three cases has the devolution settlement stabilized in an agreed division of power and influence. There is an institutional dynamic pushing for continual adaptation. The division of competences can never be entirely clear or perfect, and links among policy fields create new problems, which are then placed on the agenda. Resistance from central government departments ensures that implementation of devolution is delayed, provoking demands that it be completed. Interference by the centre sparks demands for competences to be entrenched. Both central and regional parties and individual leaders see advantage in further change, to consolidate their power bases. Second-round devolution, however, is a more complex process than first-round since there are more actors involved. First-round devolution in Italy was largely a top-down process managed by the national parties.

In Spain there was more territorial input since statutes of autonomy require a local initiative and a scheme drawn up within the limits of the constitutional provision and then accepted in the Spanish Parliament. In the United Kingdom, legislative initiative is entirely in the hands of the central Parliament, but the Northern Ireland settlement was negotiated with local politicians, while in Scotland the way to devolution was paved by a civil society initiative, the Scottish Constitutional Convention, in the 1990s. The second round differs in two ways: the devolved institutions themselves become actors in the process as well as structuring opportunities; and the process is taken into the hands of the political class, with less involvement of civil society. The process also tends to be incremental and often disjointed, as a multiplicity of interests and considerations need to be accommodated.

In Italy, second-round devolution has proceeded haltingly and uncertainly, depending largely on partisan considerations. It has also been tied up with wider efforts to reform the constitution, introduce a bipolar party system and stabilize government. There has been a rather vague commitment to federalism, but the term is interpreted in very different ways. For the centre-left, it often seems little more than administrative decentralization, although the term does have a historical presence in the Italian debate going back to the nineteenth century. The old Christian Democrats and their successors had an ideological commitment to subsidiarity but were centralist in practice and opposed to anything that might disrupt their clientelistic networks. The MSI and its post-fascist successor, Alleanza Nazionale, are strongly centralist. From the 1990s a new element was introduced in the Lega Nord, which has gyrated from regionalism to federalism to secession and back again. Silvio Berlusconi's Forza Italia is centralist in practice, but also very opportunistic and, over the years, has incorporated some regional notables who have carved out a power base for themselves. The old-line Communists in Rifondazione Comunista remain suspicious of regionalism, federalism and weakening of the state. The result of this and of coalition politics is that it has been very difficult to achieve agreement on reform. The Bicamerale commission (1996-8) included regional devolution in its remit but with a rather narrow basis of support; an earlier Bicamerale in the 1980s

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had ignored it. The Lega were uncooperative and the attempt to get agreement between centre-left and centre-right came undone when Berlusconi, who had been using the Bicamerale to give him time to get out his legal difficulties, scuttled the whole process.

The next two sets of reforms were pushed through respectively by the centre-left and the centre-right, now competing on decentralization but no longer co-operating in its pursuit. In parallel with the Bicamerale, the Prodi government passed the Bassanini laws, which transferred new competences to the regions, strengthened mechanisms for intergovernmental dialogue, sought to clarify the distribution of powers and the legislative role of regions, and assigned various taxes, including part of VAT, petroleum duty, and a regional business taxes, to the regions, but without substantial discretion over rates or coverage. There was to be an equalization fund for poorer regions. The 2001 constitutional reform of 2001 was potentially quite radical. In principle, the powers reserved to the state were defined, with everything else left to the regions, while the 'national interest' clause, allowing central intervention in devolved matters, was repealed. In practice, this is nothing like the provision in Scotland, since the reserved powers are extensive and detailed, state framework laws set the parameters in various fields, there are over-ride powers in social equity, environment and competition and there are extensive concurrent powers, potential subjects for constitutional litigation (Baldi and Baldini, 2008). Regional governments could gain more competences in an asymmetrical way. Health care was devolved in order to force regions to rationalize provision and prevent the central government bailing them out as happened in the past. Regions gained more powers in economic development. There was provision for the direct election of regional presidents, in line with efforts to stabilize governments at all levels. Regions were also given some freedom to change their electoral systems and internal organization and to gain new competences but within strict limits. In practice, little has come of this and there is nothing like the Spanish system where regions do draw up their own statutes. The reform was approved in a post-legislative referendum but on a low turnout, with the centre-right campaigning against and promising a better measure when it returned to power, although some of its regional presidents broke ranks to support the

proposals. In practice, few regions gained any competences and the process was subject to veto by the national Parliament, while the detailed fiscal provisions were never unveiled before the government fell.

The centre-right coalition that came to power under Berlusconi in 2001 was deeply divided on autonomy and its proposals sought to satisfy both the Lega, which was now committed to something called *la devolution* (the term borrowed from Scotland) and AN, with its centralist preferences (Vassello, 2006). Italy would officially be a federal state and regional competences would be extended, but so would national control, with the old 'national interest' clause reappearing. The Senate would become a regional chamber but with reduced competences. At the same time, the role of the Prime Minister would be reinforced. A package designed for the Lega Nord under the *devolution* heading gave regions 'exclusive' regional competences in health-care management, the organization of primary and secondary education, and local policing although in practice they were not really exclusive at all. This provision, moreover, was inconsistent with other key elements of the legislation. The provision for regions to get additional, asymmetrical competences was removed. This package was defeated in a referendum in 2006, with a large difference between northern regions like Lombardy and Veneto, which voted in favour, and the southern regions, which were massively against. The short-lived succeeding Prodi government did not have time to do anything in the field. Returning to power in 2008, in coalition with a strengthened Lega Nord, Berlusconi returned to the matter, this time privileging 'fiscal federalism'. This achieved all cross-party support, with the centre-left seeing it as the culmination of their own 2001 reform while the centre-right presented it as its own. The cost of agreement, however, was a remarkable vagueness on what the reform would actually do. There is to be a mixture of devolved and assigned taxes and a shift from historical expenditure to needs as the basis for fiscal equalization. A Bicameral Commission for Fiscal Federalism (15 Deputies, 15 Senators), alongside an array of technical commissions will produce detailed proposals. Since fiscal equalization is a zero-sum game, this has postponed the battles until the details are produced. Meanwhile, Berlusconi has reverted to the old pattern of bailing out

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regions and localities (controlled by his allies) that have got themselves into financial problems.

A decade of regional reform in Italy has thus produced rather little of substance. There has been some real devolution in the management of health and social services, but no proper fiscal reform. Bold declarations in constitutional reforms or laws have not been followed up with the necessary implementing laws and decrees, while the central parliament has continued often to legislate as though nothing had happened. The profile of some regional leaders has been raised through direct election and the crisis of the old political class but in parts of the south regional government has provided a refuge for elements of the old regime who have lost their foothold at the centre (Wilson, 2009). The reform process has played out at the centre, with relatively little involvement from the regions themselves.

In Spain, second-round reform is also dominated by party politics, although with a stronger role for regional governments, so that the process is played at at both territorial levels. The Spanish electoral system is strongly biased against small parties, unless they are territorially concentrated. As a result, it is difficult for either socialists (PSOE) or conservatives (PP) to gain an absolute majority and both have been obliged to deal with nationalists in Catalonia, the Basque Country, Galicia and the Canaries. Generally, PSOE has been divided between devolutionist elements, particularly strong in Catalonia, where the party itself has a degree of autonomy, and centralists, entrenched in the party's strongholds in the south. PP has been quite resolutely centralist although forced to go along with autonomy. Its regional leaders have sometimes taken a lead in autonomist demands and it also has a territorial affiliate in Navarre, UPN, which is provincialist but anti-Basque nationalist. The strongest autonomist demands come from the Basque Country but in the long period during which the Basque Government was dominated by the nationalist party (PVN) relations with Madrid were strained, especially after 2004, when Basque president Ibarretxe was pursuing a radical plan of sovereignty-association, which could not be accommodated within the Spanish constitution (Keating and Bray, 2004). Catalan nationalists, on the other hand, have been much more inclined to negotiate within

the constitution, stretching its interpretation to the limits. Constitutional reform thus tends to be led by Catalonia, with the other autonomous communities then seeking to gain parity. The development of the autonomous system has thus proceeded in phases. In the 1980s there was a series of pacts at the centre between PSOE and PP, seeking to harmonize the competences of autonomous communities and limit the process, although the most drastic limitations in the LOAPA (*Ley de armonización del proceso autonómico*) were struck down by the Constitutional Court. During the 1990s, successive minority PSOE governments were supported by both PNV and the Catalan CiU in return for concessions. For the Catalans, this took the form of the concession first of 15 per cent and then of 30 per cent of personal income tax, a measure extended to all regions except the Basque Country and Navarre (which already have full fiscal autonomy). The concession was extended to all autonomous communities and accompanied by a further transfer of competences. This phase was closed with the victory of PP by absolute majority in the elections of 2000. In 2004 PSOE returned to power without a majority, forcing it back into reliance on the territorial parties. Around the same time, the moderately nationalist and centre-right CiU lost office in Catalonia to a coalition of the Catalan socialists, the more radical ly nationalist and leftist ERC (*Esquerra Republicana de Catalunya*) and the post-Communist and Green formation *Iniciativa per Catalunya –Verds*. This both opened up the Spanish political space for a new Catalan statute of autonomy and committed the Catalan socialists to produce one, allowing them incidentally to outflank the CiU. Since the Spanish constitution requires both a local initiative and acceptance by the Spanish Parliament, these were two essential conditions for statute reform, although the Catalan PP opposed Catalan the reform, as did the PP at the Spanish level. In four regions (the Basque Country, Catalonia, Galicia and Andalucia), statute reform also requires a referendum.¹ The opening in Catalonia was then used by five other autonomous communities to pursue their own proposals. In some cases, this was done by consensus between the Spanish-wide parties operating in the region. In others statute reform was blocked because of the failure to agree. In Galicia, a coalition of socialists and nationalists (*Bloque Nacionalista Galego*) could not gain

¹ This is because these regions proceeded originally according to the fast-track provisions of article 151 of the constitution.

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the necessary parliamentary support because of opposition from the local PP. In Andalusia the PP dithered on reform, eventually coming down against it, but PSOE had a sufficient majority in any case. As in Italy, political opportunism played a big role in the attitudes of the parties. So the PP opposed a series of articles in the Catalan statute of autonomy, appealing them to the Constitutional Court while supporting identical articles in the Andalusian statute (Lamarca and Casado, 2006). While there are some differences in the statutes of individual regions due to the way they are negotiated individually, there is a tendency to convergence and to imitation (Keating and Wilson, 2008).

The largest anomalies are without doubt in the area of finance, since each region tried to write in a funding and equalization formula favourable to itself, producing a hotch-potch of conflicting criteria. This issue was passed to the Consejo de Política Fiscal y Financiera (CPFF), in which the state and the autonomous communities each have half the votes. After much deliberation, agreement was reached (with the abstention of regions governed by the PP) on a new funding formula; this was in July 2009, with the outcome backdated to the start of the year and looking forward to 2012, but it still had to be approved by Parliament and in the various bilateral committees. There is a new equalization fund, 75 per cent of which is dedicated to reaching national standards in the key areas of health, education and social services, while the rest is in the form of a block grant. There is a distribution formula including needs and population. At the same time the devolution or assignment of income tax VAT and excise taxes is extended to 50 per cent, with some more freedom over the rates (Torres, 2009).

Second-round reform in the United Kingdom also involves a mixture of central and local initiative and is subject to part competition and bargaining across the ideological and territorial divides. The statutes of autonomy for Scotland, Wales and Northern Ireland are formally ordinary acts of the UK Parliament that can be changed at any time without any special procedure. Yet the Northern Ireland settlement is also part of an international agreement, while all three were ratified by referendum, suggesting that the people of these territories are regarded as at least

partially self-determining. In any case, the existence of elected assemblies in all three territories ensures that they will henceforth be actors in any process of change. Opposition to further devolution has come from Scottish and Welsh MPs at Westminster. These were long ago identified as an obstacle, since their representative and brokerage role would be, and has been, undermined by devolution (Keating, 1978). The UK political parties are divided on the issue. Labour has always harboured pro- and anti-devolution elements but since 1999 and especially since the victory of the Scottish National Party in the 2007 Scottish elections, it has strongly stressed its unionist credentials. It is also conscious that, in order to win UK elections it needs to do well in the south of England, and cannot appear too favourable to peripheral interests. The Conservatives, opposed to Scottish and Welsh devolution in the 1990s, have now accepted it, although they did at one point propose a referendum to abolish the Welsh assembly. Lacking a significant parliamentary presence in Scotland and Wales, they do not have to worry about their local backbenchers the way that Labour does. They are also open to considering fiscal autonomy as a way of demonstrating to English voters that Scotland and Wales are not being subsidized.

Statute reform in Wales stemmed from the very nature of the 1998 legislation, which devolved only administrative powers and secondary legislation, not primary legislation as in Scotland. So from the very beginning there were demands for law-making authority. The original plans also provided for a weak, collegial executive not separate from the assembly itself and, while it was strengthened during the passage of the legislation, further reform was needed to create what is now officially the Welsh Assembly Government. In Scotland, the main defect in the original legislation was the lack of fiscal autonomy. Although voters had responded favourably to a second question on the referendum ballot proposing tax-raising powers, the governing Labour Party limited this to the ability to raise or lower the standard rate of income tax by three pence in the pound, a power that for political and administrative reasons is virtually unusable.

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An opening for change in Wales occurred when Labour lost its majority and entered into coalition with the federalist Liberal Democrats. One condition was a commission on the future of devolution, which was appointed under the Labour peer Lord Richard and proposed a gradual move to legislative powers. The outcome, under the Government of Wales Act of 2006, was a very complicated system under which the National Assembly for Wales can ask Westminster for authority to legislate in a particular field through a Legislative Competence Order. After a set period, the Assembly can then hold a referendum on moving to full legislative powers. Following the 2007 Welsh elections, a new coalition was formed between Labour and the nationalists of Plaid Cymru (something more familiar from Spanish than from British politics) with a commitment to a referendum when the time is right. Polls so far show the prospect only of a narrow victory. The National Assembly for Wales also commissioned a review of the funding formula which, not surprisingly, showed that Wales was short-changed (Independent Commission on Funding & Finance for Wales, 2009).

In Scotland, the political offer is more polarized. The Scottish National Party is pledged to independence after a referendum. On forming a minority government in 2007, it issued a White Paper proposing independence but indicating that it would be willing to put a second question, about enhanced devolution, on the ballot paper. It then launched a consultation process or 'national conversation', which was shunned by the Labour, Conservative and Liberal Democrat parties. These latter, adopting the term 'unionist', were, however, forced into a counter-move. This took the form of a resolution in the Scottish Parliament (in which they together command a majority) to establish their own Commission on Scottish Devolution (the Calman Commission) with representatives from the three parties and non-political members. Its remit was to consider constitutional change but excluding the independence option. Although this was ostensibly a home-grown response with the legitimacy of the Scottish Parliament behind it, the process was soon taken over by Westminster. The Labour Government re-appointed a full-time Secretary of State in the Cabinet (the post had been downgraded to part-time after devolution and had been expected to disappear). The Calman Commission was given central government funding and a secretariat

based in the UK Department of Justice. Proposals were cleared by UK government departments before the final report of the commission was issued (Commission on Scottish Devolution, 2009). The outcome was a very cautious set of proposals, with some enhancement of fiscal autonomy. At the time of writing, there is no sign of convergence of the two processes, national conversation and Calman.

UK devolution is thus proceeding in a piecemeal fashion. The debates in Scotland and Wales are quite separate, although Welsh demands for legislative powers are inspired by the Scottish example. Northern Irish devolution is going on a separate track again, given the distinct problems of the province and the involvement of the Republic of Ireland. The debate on English regional devolution stalled after the failed referendum of 2004, giving way to a discussion of city-regions, a concept that relates to the internal management of England rather than the balance of the United Kingdom as a whole.

The procedures for devolutionary reform vary among our three cases, from a simple parliamentary act in the United Kingdom to a constitutionally-prescribed form in Spain. Spanish autonomy statutes are organic laws requiring qualified majorities. In Italy constitutional reform itself may be required, in which case there are qualified majority requirements and, where opponents demand it, either an affirmative or abrogative referendum. At the limit, it is possible in all cases for a cartel of state-wide parties to push through changes unilaterally, and this has underlain recentralizing efforts on various occasions. Yet this has become progressively more difficult for three reasons. First, there are institutional factors like the formal role of Spanish autonomous communities in initiating statute reform or the de facto need for the consent of the Scottish and Welsh bodies to extensions in their own powers. Second is the fact that the state-wide parties are now less likely to agree. Third is the role of territorial parties, which have emerged as veto players. So there is an increasing need for an alignment of forces at both central and devolved levels and an articulation between the levels. The Spanish system, with its majority requirements, periodically creates such opportunities while blocking them at other times. In Italy, polarizing between the two blocks since the demise of the 'First Republic' has allowed the Lega

Nord to emerge as a veto player. In the United Kingdom, the state-wide parties have never in the past agreed on a programme of change and devolution only happened because a party that had an inherited commitment to it gained a large parliamentary majority and acted quickly. Now for the first time they have formed a unionist front to isolate the Scottish nationalists, but will find it hard to proceed as long as the nationalists control the Scottish government. In Wales, multilevel politics is most advanced, with the nationalists accepted as coalition partners by all the other parties², and prepared to bargain for more devolution rather than insisting on independence. There is a further obstacle in Spain and Italy in that reforms may be referred to the constitutional courts.

4. The issues at stake

Statute reform in the three countries undoubtedly has a lot to do with party advantage and short-term manoeuvring and it is sometimes difficult to see consistent principles in play. Certain issues do, however, recur. One is to do with semantics and symbolism. This is particularly notable in the Spanish case. Nationalists in the historic nationalities have been insistent on recognition as more than regions. The Constitution of 1978 proclaims the indissoluble union of the Spanish nation and the 'nationalities and regions' that comprise it, while carefully avoiding specifying which communities are which. The three historic nationalities adopted the term until the PP government, bargaining for support, allowed Aragon and the Canaries to incorporate it in their statutes, upon which the three started to ask for recognition as nations. The new statutes have a variety of more or less convoluted formulations, with the Catalan one noting in the preamble that the Catalan Parliament recognizes Catalonia as a nation even if Spain does not. There has also been a generalization of claims to historic rights, an issue originally of importance only to the Basques, although mentioned also in the original statute for Aragon. This was raised in the

² This was made clear in 2007 when a Conservative-Liberal Democrat-Plaid Cymru coalition almost came about.

Catalan debate by CiU to avoid being outflanked by the ERC. The ratified version of the Andalusian Statute also confirms it as a 'historical nationality', after the PP made its support in the national parliament conditional on removing the term 'national reality' from the first Article, although the preamble nevertheless refers to the '*Manifiesto Andalucista de Córdoba* in 1919 that described Andalusia as a national reality.' Such issues are less prevalent in the United Kingdom, where there has never been any dispute about the national status of Scotland and Wales, as opposed to the implications of it. There were some attempts to downgrade the titles of Scottish institutions. The 1970s devolution proposals had provided for a Scottish Assembly, seen as a less sovereign body than a Parliament, but the change to Parliament in 1998 attracted little controversy. Labour politicians happily signed up to the 1988 Claim of Right (CSA, 1998), which rehearsed the old claim that the Scottish people, not the Westminster Parliament, were the source of sovereignty, and ten years later as happily passed the Scotland Act, which asserted the opposite. The 1998 Act deliberately named the executive authority the Scottish Executive with Labour politicians insisting that to call it a Government would be confusing (even though we talk unproblematically about municipal government). The incoming SNP administration simply changed the title without seeking statutory authority, without much controversy. The title National Assembly for Wales (not *of* Wales) is a carefully constructed compromise, mentioning nationality but without sovereignty. It was a Labour First Minister who called the executive the Welsh Assembly Government, a title later registered in legislation. In Italy, these issues have less resonance but there is a lot semantic confusion in the debate as parties seek to appropriate concepts or to legitimize their positions with reference to them. The concept of federalism has been considerably stretched and generally abused and the use of the term 'devolution' strikes outsiders as positively bizarre. In the United Kingdom, devolution implies that power is both transferred and retained, as Westminster remains sovereign; indeed supporters of strong autonomy disdain the term and prefer self-government or the older home rule.

In the Spanish and Italian cases, there has been a lot of talk of exclusive competences. Literally interpreted, this would mean that only the region exercises a particular

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competence, with the central government shut out. In practice, it hardly ever does seem to mean this but rather suggests that the region should have control over the entire field, but without excluding a central government role; a better term might be inclusive competence. In practice, the debate is mainly about limiting the centre's ability to intervene in devolved matters and limiting framework laws or national guidelines to the minimum. Spanish statutes often mention *blindaje*, or shielding of devolved competences from central interventions or modifications. This has not featured much in the UK debate, despite the fact that Westminster insists on its right to legislate freely even in devolved fields. One reason is that the division of competences, especially in Scotland, is fairly clear and, as the devolved bodies inherited the old territorial administrative machinery, the centre does not have the capacity to intervene. Indeed it is illegal for a London minister to act or spend money in Scotland, Wales or Northern Ireland except in relation to a competence reserved to the centre in the legislation. They would not have an incentive to spend in the devolved territories even if they could, since this would merely divert money from the English programmes for which they are responsible. Moreover, since devolution, Westminster has respected the division of powers and only legislated for devolved Scottish matters in response to a request from the Scottish Parliament in the form of a Legislative Consent Motion.

Arguments about the division of competences vary from one case to another, but there are common themes. Serious debate on the appropriate level at which to locate particular policy competences has been rather scarce. It featured little in the Spanish debate, while the Commission on Scottish Devolution (2009) produced an eclectic list of items with no apparent underlying logic. Indeed, it is difficult, when proceeding incrementally, to identify individual items to transfer, since it can be argued that any one is too closely linked to another, reserved competence. There is also tendency to devolve items in principle but then claw them back in practice but subjecting them to national standards. One theme that does emerge is to do with social solidarity and its boundaries and modalities. While there are few demands for a decentralization of the basic income support measures and cash transfers, regions do often want to craft the details of their own welfare settlement, enabling them to target particular groups.

This might be a matter of policy choice or simply a desire to increase resources for clientelistic distribution. Again, however, it is easy to argue that individual measures are linked to national programmes and so cannot effectively be devolved.

Devolved governments in wealthier regions have argued for fiscal devolution to enhance their operational autonomy and (more or less explicitly) keep more of their own resources. This is an insistent demand in Catalonia and Northern Italy as well as in Scotland (where oil revenues come into the picture). Regions in southern Spain and southern Italy, along with Wales, have been much less keen on this idea and inclined to accept it only if accompanied by guarantees of fiscal equalization. Taxes available for devolution come in four forms: Value Added Tax; business taxes; excise duties; and miscellaneous minor taxes. Given that VAT is regulated by the EU and cannot be varied within states, it has been assigned in Spain and (as proposed) Italy. Business taxes are difficult to devolve since there is a risk of market distortion and the European Commission is suspicious of variable rates as a form of state aid. They are devolved in the Basque Country and Navarre, but in Italy the Berlusconi government proposes to abolish the IRAP, an unpopular business tax that is one of the main sources of revenue for regional governments. Personal income tax is easier and 50 per cent of this has been devolved in Spain (the whole amount in the Basque Country and Navarre). The Commission on Scottish Devolution (2009) recommended the devolution of half the income tax, with control over the rates, together with some minor taxes. The Welsh Commission, however, postponed the issue, preferring to focus on fiscal transfers. A proportion of VAT in Spain is assigned to the regions. An unspecified proportion of VAT and income tax is going to be assigned or devolved under Italy's fiscal federalism. Motor vehicle duties are devolved in Spain. Other minor taxes, especially to do with immovable property, are devolved or proposed for devolution in all three countries.

Fiscal devolution in itself tells us little about the amounts of money available unless we take equalization into account. This is, not surprisingly, the most difficult issue of all. Territorial redistribution in the past was often implicit, the result of national programmes benefiting citizens equally in spite of differences in the tax contribution

of different places. The development of regional government and the politicization of the regional space make the issue altogether more salient. Changing conceptions of regional development and the opening of European and global markets have pitched regions into competition with each other, although the extent to which this competition is real as opposed to politically constructed is debatable (Lovering, 1999). New and reinvigorated territorial identities may be undermining old conceptions of 'national' or state-wide solidarity.³ Regional politicians, faced with the declining efficacy of older means of electoral mobilization, have emphasized their role as defenders of a territorial interest, thus enlarging their potential constituency to all residents. In wealthier regions, they argue that they cannot afford to finance transfers to poor regions, given their own need to compete internationally. This rarely takes the form of refusing transfers outright, since the idea of inter-territorial solidarity still carries some resonance. Rather they argue that transfers should be transparent and limited so that, for example, poor regions should not end up, after equalization, with more spending capacity than the richer ones. Of course the direction of the argument is still clear, towards a reduction in fiscal transfers. Politicians in richer regions also argue that excessive transfers are not in the interests of the poor regions themselves, as it stifles initiative and traps them into dependency.

Translating these demands into practical policy is more difficult and there is considerable confusion as regions have sought to frame their proposals to their own advantage. The various Spanish statutes of autonomy have sought to incorporate equalization formulas in their own interests, favouring variously population, population density, population sparsity, immigration, average age and historic under-funding. The Catalan statute provides that equalization should not alter Catalonia's ranking in the revenues per capita. Several regions staked claims to a specific share of state investment. Some regions have also claimed that they are owed a 'historic debt', due to under-financing over the years. One of the most contentious inter-territorial issues in Spain is water and several of the statutes originally specified a defined quantity of water to be extracted from the main rivers. While the Valencian statute sought a specific share of the flowing through the river Ebro, the Andalusian

³ The evidence on this is so far inconclusive, although new research is seeking to clarify the matter.

statute sought management of the Guadalquivir and claimed the region had a right to a minimum 6550 cubic hectometres of water. The Italian Lega Nord has fixed on the formula of 'fiscal federalism' as though this were a specific policy rather than a general field of policy. This allows them to suggest that the northern regions will gain, without completely alienating their national coalition partners whose power bases lie in the south. The Commission on Scottish Devolution (2009), run by the unionist parties, avoided the question altogether, recommending that the existing Barnett formula⁴ (which is rather favourable to Scotland) be retained for the time being. The Welsh Commission, on the other hand, argued for Barnett to be replaced by a new formula on the grounds that, according to its own (rough) calculations, Wales now received less than it would do from a needs-based approach (Independent Commission on Funding & Finance for Wales, 2009).

None of the states has been able so far to resolve the issue of fiscal equalization. In Spain during the 1980s and 1990s autonomous communities were allowed to accumulate debts (having started off debt-free) and, through the key position of the Basque and Catalan nationalists in state-wide politics, to obtain further state support. In Italy, the lack of fiscal discipline was notorious. The need to meet the convergence criteria for European monetary union produced some agreed tightening in both cases, but without resolving the issue completely. Devolution in the United Kingdom coincided with a sustained period of large increases in public expenditure so that the main problem was under-spending. All three countries now face a period of fiscal austerity, which will make the question all the more urgent. Italy has embraced the concept of fiscal federalism but in way that gives hope to both donor and recipient regions, with the crucial details unresolved. In Spain, the central state has progressively ceded taxes and borne an increasing share of fiscal equalization. Successive equalization formulas have been based on need criteria but are heavily informed by political considerations and the weight of autonomous communities and parties. In the United Kingdom, key decisions about spending levels are on hold pending the general election due in 2010.

⁴ The Barnett formula takes existing expenditure levels as the base and then distributes increases or cuts among Scotland, Wales and Northern Ireland on a population basis.

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There is a recurrent concern about maintaining national standards in welfare services and the dangers of a 'race to the bottom' as regions, competing for investment, cut taxes and either cut services or, pleading poverty, ask central government to make up the balance. The new agreement on funding in Spain includes a recommendation that regions not use equalization funds to engage in tax competition but this is not binding. Spain and Italy have moved towards minimum standards in core services (*livelli essenziali di assistenza, servicios públicos fundamentales*) rather than equalizing for whatever regional governments chose to provide. This issue has also surfaced in the UK debate, where the Calman Commission on Scottish Devolution (2009) recommends that both UK and Scottish Parliaments made a pledge to respect core public services free at the point of use. It is difficult to see what this can mean in practice, as the devolved administrations have in practice been engaged in a 'race to the top' and Westminster retains the right unilaterally to reduce funding.

5. Intergovernmental relations

Intergovernmental relations in all three cases have been dominated by informal mechanisms and, above all, the political parties. There is a general recognition that this is inadequate and that more structured procedures should be put in place. There are proposals in all three cases for better coordination on sectoral policy matters, although issues of power are not directly addressed; it is assumed rather than these would work by consensus or deal with technical issues. Existing bodies, such as the UK's Joint Ministerial Committees, the Spanish sectoral conferences and the Italian state-regions commission, are prime candidates for reinforcement. Stronger regions or historic nationalities have tended to favour bilateral rather than multilateral arrangements. This has been a pronounced feature of Basque and Catalan demands, although other revised Spanish statutes also have bilateral provisions.

In all three countries, there are proposals to strengthen territorial representation in the second chamber. The Spanish Senate does have a territorial representation role but is largely elected from the provinces, with members sent from the autonomous

communities comprising only about a fifth of the membership. The Italian Senate is elected on a regional basis but does not represent the regional governments and has competences that mirror almost exactly that of the chamber of deputies. The UK House of Lords is a largely appointed body, although it still has some 90 hereditary peers and 26 bishops of the Church of England. In no case, however, has a proposal for a territorial second chamber succeeded. National governments fear that such a chamber might be too powerful, it is very difficult to agree on modes of election (whether directly or by delegation from the regions) and powerful regions are lukewarm on the idea, since it would dilute their influence and favour the formation of a broad pan-regional interest as a whole. The failed Italian constitutional reform of 2006 did envisage a regional senate, whose power would be reduced and focused on regional and constitutional issues, but in Spain and the UK the debate has not even reached the stage of legislative proposals.

More generally, central elites in the three states have sought to avoid explicit federalization of the state in the sense of strengthening the territorial dimension of the state itself. Devolution has allowed the territories greater autonomy in decision-making within their own sphere but without prejudicing the autonomy of the centre from territorial influences. In Spain and, even more, in Italy, local government has remained a competence of the central state, with direct links by-passing the regional level, so militating against a truly federal reform.

During the 1990s the debate about regional devolution was closely linked with that about European integration. There was a fear that competences gained under devolution could be lost to Europe or back to the state, as it is the states that are represented in the Council of Ministers, even when it is dealing with devolved matters. While initially this made some regionalists suspicious of Europe, attitudes gradually changed to embrace Europe as a new field of action. The Europe of the Regions concept was perhaps poorly developed but the general idea was that supra-national and sub-state rescaling were complementary and that devolved territories should find a distinct place in the new European architecture. The high point of the movement was the Maastricht Treaty on European Union, which established the

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Committee of the Regions and allowed regional representatives to attend the Council of Ministers where permitted by state regulations and representing the state as a whole. The failure to make further progress in the Convention on the Future of Europe and the subsequent constitutional and Lisbon treaties led to a certain disillusionment and a focus instead on influencing state governments and getting to Europe through them. Second round reforms have been notable for their lack of rhetoric around the Europe of the Regions and new opportunities, but they have tended to involve practical mechanisms for ensuring regional influence over states' European negotiating positions.

6. The dynamics of reform

Decentralization in all three countries is a process that creates its own dynamics, as new agents are brought into being, new issues emerge and regions are constituted both as systems of action and as actors in a new form of territorial competition. Competition over resources is, as noted, ubiquitous. Competition over status is prevalent in Spain where every advance in recognition or powers by the historic nationalities generates demands for parity (Moreno, 1997). A clause in the Valencian Statute, the 'Camps Clause', allows it to re-align its level of competences or fiscal arrangements to reflect those of other Spanish regions (Orte, 2007). The state has conceded many of these demands in the interest of symmetry but this provokes the historic nationalities in turn to reassert their special status, or *hecho diferencial*. There is something of the same process in Italy, where the special status regions set the standard, although regions in the south have been much less keen on seeking autonomy than those in the north. The case of the United Kingdom is quite different. Although there have been efforts in Wales to match the powers of the Scottish Parliament, there has been no generalization of autonomy demands. The movement for regional government in England, which started partly as a response to Scottish devolution and an effort to take advantage of it (in contrast to the 1970s when they simply opposed Scottish devolution), has signally failed. This might support the

argument of Herrero de Miñón (1998) in the Spanish case, that an explicit definition of the state as plurinational, with clearly demarcated differences in status, might actually reduce the amount of conflict, although this has so far not convinced elites outside the historic nationalities.

This competition over autonomy sets up a centrifugal dynamic in the states concerned, but it is balanced by integrative forces. The incorporation of territorial parties into national government through coalition (in Italy) or external support (in Spain) links them back into national politics and restrains separatist tendencies. Inter-party accommodation in the very different circumstances of Northern Ireland and Wales has resulted in nationalist parties serving in unionist governments, parking their long-term ambitions for the time being. So while the territorial cleavage has challenged national political systems it has also been incorporated as a 'normal' part of domestic politics rather than an existential challenge.

After the initial move to set up autonomous governments, there has been no further 'big bang'. Decentralization has been caught up in other stalled constitutional issues, such as the debate on state reform in Italy or the eternal debate about formalizing the constitution in the United Kingdom. Canadian experience suggests that, as the number of actors and issues multiplies, reform of the territorial constitution becomes impossible. Spain, Italy and the United Kingdom have not yet reached this stage, but the complexity of the issue suggests that future reforms will be incremental and often disjointed rather than following a grand design. Issues will be dealt with sequentially, generating problems and anomalies that lead in turn to the next reform. This suggests that constitutional politics will not be a once-in-generation phenomenon leading to a period of stability but part of the political mainstream. The question of inter-territorial equity, which is not strictly a constitutional issue, is likely to become even more important but in the absence of agreed principles on how to do it, will also be dealt with by incremental adjustments and compromises.

Rescaling at the substate level continues to be influenced by the parallel process of transnational integration. Were the European integration process to receive a boost in the future, the place of regions in the new order would again be posed. Even in the

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absence of formal recognition as actors in the European game, some regions are better linked to European networks than others or better placed to compete within the single market. This is likely to place further strain on state-level territorial compromises and keep the issue of territorial autonomy on the political agenda.

References

Aja, Eliseo (2003), *El Estado Autonómico. Federalismo y hechos diferenciales*, 2nd edn., Madrid: Alianza.

Baldi, Brunetta and Gianfranco Baldini (2006), 'Italia', in Sofia Ventura (ed.), *Da stato unitario a stato federale. Territorializzazione della politica, devoluzione e adattamento istituzionale a Europa*, Milan: Il Mulino: 69-109.

Commission on Scottish Devolution (Calman Commission) (2009), *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century. Final Report*, presented to the Presiding Officer of the Scottish Parliament and to the Secretary of State for Scotland, on behalf of Her Majesty's Government.

Cooke, Philip and Kevin Morgan (1998), *The Associational Economy*, Oxford University Press.

Independent Commission on Funding & Finance for Wales (2009), *Funding devolved government in Wales: Barnett & beyond*, Cardiff: Commission.

Hazel, Robert (ed.), *The English Question*, Manchester: Manchester University Press.

Herrero de Miñón, Miguel (1998), *Derechos históricos y constitución*, Madrid: Taurus.

Independent Commission on Funding & Finance for Wales (2009), *First report*, Cardiff: Welsh Assembly Government.

Keating, Michael and Alex Wilson (2009), 'Renegotiating the State of Autonomies: Statute Reform and Multi-level Politics in Spain', *West European Politics*, 32.3: 534-556.

Keating, Michael and Zoe Bray (2006), 'Renegotiating Sovereignty: Basque nationalism and the rise and fall of the Ibarretxe Plan', *Ethnopolitics*, 5.4: 347-64.

Keating, Michael (1978), 'Parliamentary Behaviour as a Test of Scottish Integration in the United Kingdom', *Legislative Studies Quarterly*, 111.3 (1978): 409-29.

Keating, M. (1998) *The New Regionalism in Western Europe*, Edward Elgar.

Lamarca, Albert and Vanessa Casado, (2006) 'Comparative entre les reformes dels Estatuts d'Autonomia de Catalunya I d'Andalusia: Articles impugnats davant el Tribunal Constitucional' *Revista per A l'analisi del Dret* (December).

Lovering, John (1999), 'Theory Led by Policy: The Inadequacies of the "New Regionalism"', *International Journal of Urban and Regional Research*, 23: 379-90.

Moreno, Luís (1997), *La federalización de España. Poder político y territorio*, Madrid: Siglo Veintiuno.

Putnam, Robert (1993), *Making Democracy Work. Civic Traditions in Modern Italy*, Princeton University Press.

Swenden, W. (2006), *Federalism and Regionalism in Western Europe*, Basingstoke: Palgrave.

Torres, Matias (2009), '¿En que consiste el nuevo modelo de financiación autonómica?',

Vassallo, Salvatore (2006) 'Il Mito della "Devolution" e la realtà della riforma', *Il Mulino*, 650-657.

Second Round Reform

Wilson, Alex (2009), Multi-level Party Politics in Italy and Spain, PhD dissertation, European University Institute.

finanza\$.com, blog de actualidad económica, 16 July.

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